

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6906 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

MN GAMALI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6906 of 1985
MR NIKHIL; KARIEL FOR MR BP TANNA for Petitioner No. 1
M/S MG DOSHIT & CO for Respondents No. 1-2
NOTICE SERVED for Respondent No. 3

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 27/09/2001

ORAL JUDGEMENT

#. Mr. M.N.Gamali- the petitioner has filed this petition for getting a declaration that he is entitled to

get rent free accommodation or in the alternative compensation in lieu of rent free accommodation pursuant to the Government Resolution dated 24th April 1978 read with second Resolution dated 26th December 1978. The petitioner has further prayed for direction from this court directing the respondents to give compensation in lieu of rent free accommodation from July 1980 till they provide him with rent free accommodation or to continue to give him compensation thereof in accordance with law. Aforesaid petition was filed somewhere on 16.12.1985 before this court.

#. In the petition it was submitted by the petitioner that he was working as a Jr. Scientific Assistant in the Paraplegia Hospital in the compound of Civil Hospital, Ahmedabad. The petitioner was appointed as a Laboratory Technician in B.J.Medical College, Ahmedabad in the year 1963. In the year 1976 he was promoted as Jr. Scientific Assistant in the blood Plasma Unit.

#. It has been contended in the petition that under the Resolution dt. 26th April 1978 the Government has decided to provide rent free accommodation to certain staff working under the Directorate of Medical Education and Research. In the categories of employees, Laboratory Technicians were included. So Laboratory Technicians were entitled to rent free accommodation or in lieu thereof allowance. On 26th December 1978 the Government has decided to provide rent free accommodation to Jr.Scientific Assistants working in the Blood Plasma Unit of the Civil Hospital, Ahmedabad. So the petitioner was getting compensation in lieu of rent free accommodation.

#. It is further submitted in the petition that in the year 1980 the petitioner was required to work for administrative convenience in the paraplegia hospital in the Civil hospital itself. Out of four posts of Laboratory Technicians which were there one post has been converted as Jr.Scientific Assistant. So on his posting as Jr.Scientific Assistant the respondents discontinued to pay him compensation in lieu of rent free accommodation which gives rise to the cause for filing of this Special Civil Application.

#. When the CA No.1558 of 1987 in the aforesaid petition was placed for hearing before this Court(Coram: J.P.Desai-J as then he was) on 9.12.1987 this Court passed the following order:

" Heard Mr. B.P.Tanna for the petitioner and
Miss Dohit for the respondent. Resolution No.ECR

1087-20-M dated 8.6.87 issued by the Government of Gujarat, Finance Department shows that the persons holding posts under the Director of Health, Medical and Medical Education are entitled to facility of rent free accommodation. Government Resolution No. PCR 3975/32-M dated 1.12.75 prescribes for payment of cash allowance to the persons who are entitled to rent free accommodation but are not provided rent free accommodation. The applicant is entitled to rent free accommodation but is not given the same. In view of this it is directed by way of interim relief that the respondent should provide rent free accommodation to the petitioner as early as possible and till the rent free accommodation is given to the petitioner, they should pay to the petitioner with effect from 1.12.87 cash allowance in lieu of the rent free accommodation, the allowance which may be permissible and which may be fixed from time to time by Government. Rule made absolute."

#. Thereafter this matter was placed for hearing before this Court (Coram: S.K.Keshote-J) on 3.12.1997, this court considered the matter and passed an order on that day and in para 5 of the said it has been observed as under:

" I have given my thoughtful consideration to the submissions made by the learned counsel for the petitioner. In this case reply has not been filed by the respondents. The learned counsel for the respondents made oral submissions, but he is unable to satisfy the court why the benefit of rent free accommodation or in lieu thereof compensation which the petitioner was receiving earlier is denied to the petitioner. In view of this position I consider it proper that this petition be disposed of in terms that respondent no.1 Secretary to Government, Health and Family Welfare Department and respondent no.2 and 3 will sit together and decide the question of entitlement of the petitioner for rent free accommodation or compensation in lieu thereof, and pass appropriate order after hearing the petitioner. This exercise may be undertaken within a period of three months from the date of the receipt of copy of this order. If the claim of the petitioner is not acceptable then a reasoned order may be passed and copy thereof may be sent to the petitioner by registered post AD .

If the petitioner's claim is accepted he is entitled to all consequential benefits flowing from such order. Liberty to the petitioner for revival of this Special Civil Application in case this claim is not accepted. Special Civil Application stands disposed of accordingly. Rule discharged."

#. After passing of the said order it appears that the Director, Medical Services (Medical Education), Gandhinagar passed an order dated 27.11.1999, Gandhinagar stating that the petitioner was not entitled to rent free accommodation from 1.12.87 to 31.7.1992. After passing the said order by the respondent no.2 the petitioner has filed Misc. Civil Application No.1441 of 2001 before this Court and prayed for revival of the SCA No.6906 of 1985. It may be noted that in the order of this court it categorically states that the respondent no.1 Secretary to Government Health and Family Welfare Department and respondent no.2 and 3 will sit together and decide the question of entitlement of the petitioner for rent free accommodation or compensation in lieu thereof and pass appropriate orders after hearing the petitioner. However, I have gone through the order passed by the Director of Medical Services (Medical Education). But from the order it is not very clear as to whether Government has complied with the requisition contained in the order passed by this Court on 3.12.1997.

#. Mr. Nikhil Kariel learned advocate learned advocate for Mr. Tanna Associates has also tried to assail the order of the respondent Government on the ground that the Government has passed the order without taking into account the object and purpose of the order passed by this Court and therefore, this Court may quash and set aside the order only on this ground.

#. However, if I accept the contention of the learned advocate for the petitioner that will again entail the delay in deciding the matter and therefore, I am deciding the matter on merits in this behalf. The authorities have held that the petitioner is not entitled to the relief on the ground that the Circular dated 26.12.1978 is not contemplating the benefit to be given to Jr.Scientific Assistant working in Paraplegia Hospital, Ahmedabad Centre. Secondly, the order states that in the interim order dated 9.12.1987 of this Court there is a specific direction that the petitioner should apply for accommodation and the petitioner has also failed to give said application. There respondent authority has also stated the authority has addressed a letter dt. 7.1.1988

to the petitioner to file such an application for accommodation but the petitioner has failed to give such an application. Therefore, also the petitioner is not entitled to rent free accommodation or compensation in lieu thereof.

##. Learned Advocate for the petitioner submitted that original Government issued a Circular dated 26.4.1978 which provides that Government is pleased to direct that the existing facilities of rent free accommodation available to the following categories of employees under the Director of Medical Education and Research should be further continued beyond 31st December 1976 on the same terms and conditions. This Government Resolution includes the post of Laboratory Technician. Thereafter said circular was amended and the same was also extended to Jr.Scientific Assistant working in Paraplegia Hospital, Civil Hospital, Ahmedabad to which the petitioner was originally working.

##. It may be noted that the petitioner was transferred from Blood Plasma Unit to Paraplegia Hospital on 12.12.1979. Learned advocate for the petitioner submitted that said post was equivalent to the post of Jr.Scientific Assistant and therefore, he ought to have been entitled to rent free accommodation. He further submitted that the petitioner has made a representation dt. 17.6.1989 to the Director of Medical Education, Civil Hospital, Ahmedabad and he also addressed a communication dt. 30.4.1982 to the Addl. Director in this behalf. He has also relied upon further communication dt. 17.5.1983 addressed to the Secretary to Government, Health and Family Welfare Department by the Deputy Director, Health Education and Research recommending the case of the petitioner in this behalf.

##. However, in spite of this weighty recommendation, the Section Officer of the Health and Family Welfare Department addressed a letter to the Dy. Director, Medical Education and Research dt. 8.6.1983 as to whether the benefit of rent free accommodation is given to the said post or not. The Director Paraplegia Hospital also addressed a letter dated 18.3.1985 to Director of Health and Medical Services recommending the case of the petitioner in this behalf. Along with the said letter the Director of Health and Medical Services has also submitted a comparative statement about the work of Jr.Scientific Assistant working in the Blood Bank Unit and Paraplegia Hospital in this behalf. This shows that duties performed by the Jr.Scientific Assistants in both the units are almost identical in this behalf. The

Section Officer of Health and Family Welfare Department addressed a letter dt. 20.9.1985 to the Dy. Director of Health Education and Research stating that the question of giving rent free accommodation was included in the terms of reference of the Pay Commission and the Pay Commission has submitted its report before the Government and therefore, the Government may not be able to take a decision in this matter at this stage.

##. The learned advocate for the petitioner has therefore, submitted that in view of the aforesaid communication in this behalf the order of the authority denying the rent free accommodation from 1.12.1987 to 31.7.93 is illegal and bad and liable to be quashed and set aside. He further submitted that Paraplegia Hospital was established somewhere in 1979 and therefore, obviously the Government Resolution dated 26.4.1978 would not have made a reference giving benefits to the petitioner in this behalf. He is also read out interim relief granted by this Court. But that interim relief does contemplate that the petitioner should file an application for rent free accommodation or compensation in this behalf. In spite of the authority writing letter to the petitioner two times in this behalf, the petitioner has not applied to the same. Learned advocate for the petitioner further submitted that the petitioner is claiming rent free accommodation or compensation in lieu of the same from July 1980 to December 1987 in which month he has filed undertaking in this behalf.

##. Ms Nandini Joshi learned AGP for the respondent Government has pointed out a letter dated 7.1.1988 in which the petitioner was requested to file an application. That letter is on record of the case at item no.7. It is true that the petitioner has not applied for pursuant to the said direction. The learned AGP has invited my attention to the Resolution dated 21.5.1988 in which the Government has directed that the facility of the Rent Free Accommodation where it is sanction at present should be continued except the posts as shown in the Annexure to the Resolution. In the said Resolution at item no.27, the post of Jr.Scientific Assistant is mentioned. Therefore, Jr. Scientific Assistant is entitled for rent free accommodation.

##. I have considered the submissions of the learned advocate for the petitioner Mr. Nikhil Kariel and also the order passed by this Court (Coram: J.P.Desai-J as

then he was) on 9.12.1987 as well as the order passed by this Court (Coram: S.K.Keshote-J as then he was) on 3.12.1997. I have also gone through the order passed by the Director. Medical Services (Medical Education), Gandhinagar dated 27.11.1999. In my view the Government has passed the order without taking into account the object and purpose of the order passed by this court and on this ground alone the order passed by the Director, Medical Services (Medical Education) dated 27.11.1999 has to be quashed and set aside. However, in my view the order of the Government dated 27.11.1999 does not properly consider the Circular dated 26.4.1997. The Government has also not properly considered the fact that the petitioner was transferred from Blood Plasma Unit to Paraplegia Hospital on 12.12.1979 and the said post was equivalent to the post of Jr.Scientific Assistant. The authority has not considered the representation made by the petitioner on 17.6.1989 and also the letter dated 30.4.1982 addressed to the Additional Director in this behalf. The impugned order does not properly consider the communication dated 17.5.1983 addressed to the Secretary to Government, Health and Family Welfare Department by the Dy. Director who has recommended the case of the petitioner in this behalf. The impugned order also does not properly consider the letter dated 18.3.1985 addressed by the Director of Paraplegia Hospital to the Director of Health and Medical Services who has also recommended the case of the petitioner in this behalf. In my view the impugned order also does not consider the fact that the duties performed by the Jr.Scientific Assistant in both the units are almost identical in this behalf. In my view the Paraplegia Hospital was established some where in the year 1979 and therefore, the G.R. dated 26.4.1978 would not have made a reference giving benefits to the petitioner in this behalf.

##. In my view the order of the authority i.e. the Director of Medical Services, Gandhinagar dated 27.11.1999 is contrary to and inconsistent with the record of the case and said order does not consider the weighty recommendation made by the authority in favour of the petitioner in this behalf and thereby ignored the relevant consideration for deciding the same. The authority has vehemently relied upon the Resolution dated 26.12.1978 and has stated that as this Resolution does not provide for the post of Jr.Scientific Assistant in Paraplegia Hospital which post was created after wards and therefore, the order of the authority is contrary to and inconsistent with the records of the case. The authority has also denied the benefits on the ground that the petitioner has not provided sufficient evidence in

this behalf and the petitioner has not filed necessary application. In this case the authority has failed to consider the fact that the petitioner was making representation from time to time particularly from July 1980 to 1987 which representations have also been ignored by the authority and therefore also the order of the authority is liable to be quashed and set aside.

##. I also do not accept any of the contentions of the learned AGP for the Government in this behalf. The learned AGP has merely tried to support the order of the authority which I have clearly demonstrated that the same is contrary to and inconsistent with the facts and record of the case and therefore also I do not accept any of the contentions raised by the Government in this behalf.

##. In the circumstances the order dated 27.11.1999 issued by the Director of Medical Services as also the communication dated 7.12.1999 directing to recover an amount of Rs. 5600/- from the petitioner are quashed and set aside.

##. I, therefore, direct the Health and Family Welfare Department, Government of Gujarat to consider the case of the petitioner in granting rent free accommodation or compensation in lieu thereof right from July 1980 to December 1987 and determine the amount of compensation to be paid to the petitioner in this behalf in view of the observations made hereinabove. I further direct the Government of Gujarat, Health and Family Welfare Department to do the calculation by 31.12.2001. The petition is partly allowed. Rule is made absolute to the above extent only. No order as to costs.

(K.M.Mehta.J)

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